



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

OBJECTION TO AN  
APPURTENANT RIGHTS CLAIM

Form APRT-OBJ

For Official Use Only:

2012 SEP 21 PM 1:22

**Instructions:** Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

**A. OBJECTOR**

NAME/COMPANY

Wailuku Water Company, LLC

Contact Person

Avery B. Chumbley

Mailing Address

P. O. Box 2790, Wailuku, Hawaii 96793

Phone

808/244-7079

Fax

808/242-7968

E-mail Address

abc@aloha.net

**Explain your legal or material interest in objecting to this Appurtenant rights claim.**

Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.

**B. APPLICANT (As listed in the Public Notice)**

NAME/COMPANY

Koolau Cattle Co.

Use Permit Application No.

635 Kenolio Road

Mailing Address

Kihei, HI 96753

SWUPA#2593

Identify all Tax Map Keys (TMK) re

TMK: (2)3-2-009-001; (2)3-2-013-036; (2)3-2-013-037;  
(2)3-2-013-038; (2)3-2-013-042; (2)3-2-013-043

**C. REASON(S) FOR OBJECTION**

**Select all that apply below. The objector has the burden of proof on all objections.**

☐ The parcel was not used as a residence or for cultivation at the time of the Mahele.

☒ The Appurtenant right to water has been reserved or extinguished.

☒ There are materially false statements or representations in the claimant's application for Appurtenant rights.

**Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed):**

The claim must be reviewed in light of the following:

- Whether the claim properly characterized the source of the water for which the claim is asserted;
- Whether the rights claimed are subject to Public Utilities Commission Regulation; and
- Whether the rights have been extinguished.

See the attached sheets which expand on the objections and provide documentary support for the objection(s).

**Supporting documentation / evidence must be provided on separate sheets.**

**D. OBJECTOR SIGNATURE**

☐ By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.

Print Name:

Avery B. Chumbley,  
Authorized Representative

Signature:

Date:

September 18, 2012

FILE ID:

DOC ID:

other 3650.6  
SWUPA 2593.6  
10122

Form APRT-OBJ 08/29/2012

### **Whether the Claim Properly Characterized The Source of Water**

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

**Rights Claimed May be Subject to Public Utilities Commission Regulation**

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

### **Were Appurtenant Water Rights Extinguished**

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.



R-330

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAR 15, 2004 08:01 AM

Doc No(s) 2004-052146

/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$2300.00

20 1/2 Z6

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (☒) Pickup ( ) To:RDD LLC  
635 Kenolio Rd  
Kihei, HI 96753TG: 200411170 - B  
TGE: A220110216003  
N Kwon

25 ①

Tax Key: (2) 3-2-009-001

Total No. of Pages: 12

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by RDD LLC, a Hawaii limited liability company, whose address is 635 Kenolio Road, Kihei, / Hawaii 96753, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and convey

unto the Grantee as a tenant in severalty, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

EXCEPTING, RESERVING AND GRANTING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

EXCEPTING, RESERVING AND GRANTING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operation, the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and

processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the Property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal and State environmental and agricultural laws and regulations, and Grantee, its successors and assigns, shall indemnify and hold Grantor, its successors and assigns, harmless from any liability or expense resulting from such claims arising from such nuisance whether made by Grantee or guests or other persons using the Property.

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and

encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

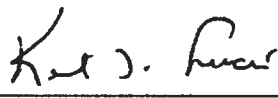


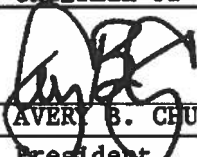
IN WITNESS WHEREOF, the Grantor and Grantee have  
executed these presents on this \_\_\_\_ day of MAR 08 2004,  
20\_\_.

**APPROVED AS TO FORM:**  
**MANCINI, WELCH & GEIGER**

*By Peter A. Horovitz*

WAILUKU AGRIBUSINESS CO., INC.

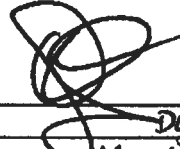
By   
KENT T. LUCIEN  
Its Chairman of the Board

By   
AVERY B. CRUMBLEY  
Its President

Grantor

RDD LLC

By



Doyle G. Betzall

Its

Member/Manager

By



Dwayne N. Betzall

Its

Member/Manager

Grantee

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Print Name: \_\_\_\_\_

Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

RDD LLC

By \_\_\_\_\_

Its \_\_\_\_\_


By \_\_\_\_\_

Its \_\_\_\_\_

Grantee

*N.R.*  
*NP*  
STATE OF HAWAII )  
HAWAII ) SS.  
COUNTY OF ~~MAUI~~ )

*N.R.*  
*NP*  
On this 8th day of March, 20<sup>04</sup>, before me personally appeared AVERY B. CHUMBLEY and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

*N.R.*  
*NP*  
*L.S.*  
  
Print Name: Nora Rosario  
Notary Public, State of Hawaii.

My commission expires: 12-13-2006

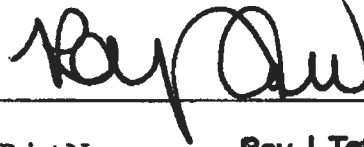
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)  
)  
)

SS.

On this \_\_\_\_ day of MAR 9, 2004, before me personally appeared KENT T. LUCIEN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: Roy J. Tatsuno

Notary Public, State of Hawaii.

My commission expires: NOV 2 2005

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this 10th day of March, 2004, before me personally appeared Doyle G. Betzall and Dwayne N. Betzall, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: Pamela T. Correa  
Notary Public, State of Hawaii.

My commission expires: 12-07-07

EXHIBIT "A"

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 5349, Land Commission Award Number 2413 to Kuaiki, Royal Patent Number 5995, Land Commission Award Number 2654 to Kahalewai, and portions of Royal Patent Number (none), Land Commission Award Number 8559-B, Apana 20 to William C. Lunailo, Royal Patent Number 7584, Land Commission Award Number 781, Apana 2 to Alexander M. Birch, Land Patent Grant Number 6628 to Thomas B. Lyons and Royal Patent Number 4475, Land Commission Award Number 7713, Apana 24 to V. Kamamalu) situate, lying and being at Waihee, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-2-009-001 and containing an area of 113.00 acres, more or less.

Said above described parcel of land having been acquired by WAILUKU SUGAR COMPANY, a Hawaii corporation, by the following:

1. DEED of H. WILLIAM WOLTERS dated March 1, 1895, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 152 at Page 348;
2. DEED of WAIHEE SUGAR COMPANY dated December 31, 1894, recorded in the said Bureau of Conveyances in Liber 152 at Page 189;
3. DEED of WAIKAPU AGRICULTURAL COMPANY, LIMITED, a Hawaii corporation, dated September 1, 1921, recorded in the said Bureau of Conveyances in Liber 605 at Page 418;
4. EXCHANGE DEED of J. H. KUNewa dated August 14, 1924, recorded in the said Bureau of Conveyances in Liber 747 at Page 23; and
5. FINAL JUDGMENT filed on July 21, 1999, in the Circuit Court of the Second Circuit, State of Hawaii, in Civil No. 99-0289(3), WAILUKU AGRIBUSINESS CO., INC. and C. BREWER AND COMPANY, LIMITED, "Plaintiffs", v. LEI MAIALOHA, also known as LEIMOMI MAIALOHA, KAHALEWAI, et al., "Defendants", dated July 21, 1999, recorded in the said Bureau of Conveyances as Document No. 99-118437.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Plantation road as shown on tax map.
3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. Any unrecorded leases and matters arising from or affecting the same.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
6. Title to Royal Patent 5349, Land Commission Award 2413 to Kuaiki, and Royal Patent 5995, Land Commission Award 2654 to Kahalewai, were quieted by Civil No. 99-0289(3) filed in the Circuit Court of the Second Circuit; entitled WAILUKU AGRIBUSINESS CO., INC. and C. BREWER AND COMPANY, LIMITED, as Plaintiffs, vs. LEI MAIALOHA, also known as LEIMOMI MAIALOHA, KAHALEWAI (k) (husband of Kamiki (w)), STEPHEN SPENCER KAAIPUAA (k) and his wife, KAHUUMIKIALA (w), KANIAUPIO (k) (grandchild of Kahalewai (k)), LUCY KAUHAAHAA, DAVID KAHINAWA KANIAUPIO, et al, as Defendants. Final Judgment was filed on July 21, 1999 and recorded as Document No. 99-118437, vesting title in WAILUKU AGRIBUSINESS CO., owner in fee simple of Royal Patent 5349, Land Commission Award 2413 to Kuaiki, and WAILUKU AGRIBUSINESS CO., owner in fee simple of the mauka half, and an undivided 1/4 interest in the makai half of Royal Patent 5995, Land Commission Award 2654 to Kahalewai, and C. BREWER AND COMPANY, LIMITED, owner in fee simple of an undivided 3/4 interest in the makai half of Royal Patent 5995, Land Commission Award 2654. The mauka and makai halves of Royal Patent Number 5995, Land Commission Award Number 2654, do not currently appear to be separate lots of record. Clarification with the County of Maui is recommended.
7. Pending Civil No. 02-1-0539 filed in the Circuit Court of the Second Circuit, State of Hawaii; LIVING WATERS LAND FOUNDATION LLC, "Plaintiff", vs. WAILUKU AGRIBUSINESS COMPANY,

INC., and WAIEHU AINA, LLC., "Defendant"; re: Controversy over right of access over disputed road.

8. NOTICE OF PENDENCY OF ACTION between MAHEALANI VENTURA-OLIVER, Plaintiff, and WAILUKU AGRIBUSINESS CO., INC., et al., Defendants, dated May 12, 2003, filed in the Circuit Court of the Second Circuit, State of Hawaii, Case No. 03-1-0186, on May 12, 2003, and recorded in the said Bureau of Conveyances as Document No. 2003-112276 on June 5, 2003, re: quiet title.

9. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

END OF EXHIBIT "A"

Tax Key: (2) 3-2-009-001





R-1038 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
APR 25, 2003 08:02 AM  
Doc No(s) 2003-076805



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$2000.00

20 1/5 22

LAND COURT SYSTEM REGULAR SYSTEM  
Return by Mail (x) Pickup ( ) To: RS 1

MR DOYLE BETSILL  
KOOLAU CATTLE COMPANY LLC  
635 KENOLIO RD  
KIHEI, HI 96753

TG: 200248507-S  
TGE: A2-201-1621-0001  
CRAIG YAMASAKI

Tax Key: (2) 3-2-013-013 Total No. of Pages: (19)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by KOOLAU CATTLE COMPANY LLC, a Hawaii limited liability company, whose address is 635 Kenolio Road, Kihei, Hawaii 96753, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and

convey unto the Grantee as a tenant in severalty, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

EXCEPTING AND RESERVING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operation, the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which

operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the Property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal and State environmental and agricultural laws and regulations, and Grantee, its successors and assigns, shall indemnify and hold Grantor, its successors and assigns, harmless from any liability or expense resulting from such claims arising from such nuisance whether made by Grantee or guests or other persons using the Property.

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned, and except also the liens

and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

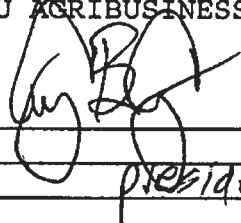
The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents on this 26<sup>th</sup> day of March, 2003.

WAILUKU AGRIBUSINESS CO., INC.

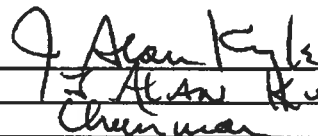
By

Its

  
Alex B. Chumbley  
president

By

Its

  
J. Alan Kyle  
Chairman

Grantor

KOOLAU CATTLE COMPANY LLC

By

Its

DOUG BERTON

MGR

Grantee

STATE OF HAWAII

COUNTY OF MAUI

)  
) SS.  
)

On this 14<sup>th</sup> day of March, 2003, before me personally appeared Avery D. Chumley and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: \_\_\_\_\_

Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

NANETTE T. KWON

EXPIRATION DATE: AUGUST 1, 2003

~~KOOLAU CATTLE COMPANY LLC~~

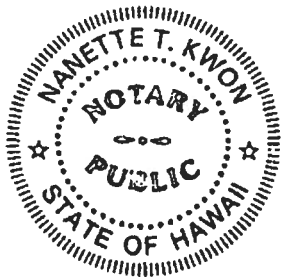
By \_\_\_\_\_

Its \_\_\_\_\_

~~Grantee~~

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF MAUI                    )

On this 14<sup>th</sup> day of March, 2003, before me personally appeared Avery B Chumley and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.





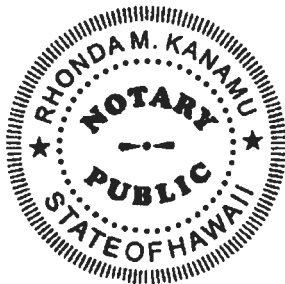
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

NANETTE T. KWON  
EXPIRATION DATE: AUGUST 1, 2003

STATE OF HAWAII )  
                  MAUI ) SS.  
COUNTY OF HONOLULU )

On this 18<sup>th</sup> day of March, 2003, before me personally appeared J. ALAN KUGLE and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Rhonda M. Kanamu  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_  
Rhonda M. Kanamu  
Expiration Date: September 9, 2005

STATE OF HAWAII )  
                  ) SS.  
COUNTY OF MAUI )

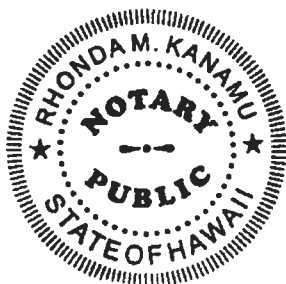
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

STATE OF HAWAII )  
MAUI ) SS.  
COUNTY OF HONOLULU )

On this 18<sup>th</sup> day of March, 2003, before me personally appeared J. ALAN KUGLE and \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Rhonda M. Kanamu  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_  
Rhonda M. Kanamu  
Expiration Date: September 9, 2005.

STATE OF HAWAII )  
COUNTY OF MAUI ) SS.

On this 26<sup>th</sup> day of March, 2003, before me personally appeared DOYLE BETSUI, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Margaret A. Joynson  
Print Name: MARGARET A. JOYNSON  
Notary Public, State of Hawaii.

My commission expires: 10.16.03



EXHIBIT "A"

All of that certain parcel of land (being portions of the land(s) described in and covered by Royal Patent Number 7584, Land Commission Award Number 781 to Alexander M. Birch, Royal Patent Grant Number 6628 to Thomas B. Lyons, Royal Patent Grant Number 5278 to C. Brewer and Company, Ltd. and Land Commission Award 8559-B, Apana 20 to William C. Lunalilo) situate, lying and being on the westerly side of Kahekili Highway at Kapoino, Hananui, Kou, Waiehu, Wailuku, Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of Reed M. Ariyoshi, Land Surveyor, dated December 20, 2002:

Beginning at a point at the northerly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 15,900.04 feet North and 2,435.25 feet West and running by azimuths measured clockwise from true South:

1. 310° 03' 178.26 feet along the westerly side of Kahekili Highway to a point;
2. Thence along same on a curve to the right, having a radius of 4,960.00 feet, the chord azimuth and distance being: 310° 44' 118.31 feet to a point;
3. 311° 25' 1,081.38 feet along same to a point;
4. Thence along same on a curve to the left, having a radius of 5,040.00 feet, the chord azimuth and distance being: 309° 57' 30" 256.54 feet to a point;
5. 308° 30' 245.32 feet along same to a point;
6. 38° 30' 28.09 feet along same to a point;
7. 308° 30' 107.39 feet along same to a point;
8. 38° 30' 10.00 feet along same to a point;

9. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being:  $218^{\circ} 30'$  and the point of tangency azimuth from the radial point being:  $233^{\circ} 44' 12''$ , having a radius of 656.20 feet, the chord azimuth and distance being:  $316^{\circ} 07' 06''$  173.99 feet to a point;
10.  $76^{\circ} 21'$  654.51 feet along the northerly side of Malaihi Road to a point;
11.  $79^{\circ} 40'$  11.89 feet along same to a point;
12.  $87^{\circ} 34'$  20.28 feet along same to a point;
13.  $95^{\circ} 21'$  80.92 feet along same to a point;
14.  $97^{\circ} 45'$  72.42 feet along same to a point;
15. Thence along same on a curve to the left, having a radius of 332.96 feet, the chord azimuth and distance being:  $79^{\circ} 41'$  206.52 feet to a point;
16.  $61^{\circ} 37'$  91.37 feet along same to a point;
17.  $64^{\circ} 58' 27''$  89.76 feet along same to a point;
18. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being:  $341^{\circ} 50' 19''$ , and the point of tangency azimuth from the radial point being:  $349^{\circ} 30' 30''$ , having a radius of 347.04 feet, the chord azimuth and distance being:  $75^{\circ} 40' 24.5''$  46.42 feet to a point;
19.  $79^{\circ} 30' 30''$  83.70 feet along same to a point;

20. Thence along same on a curve to the left, having a radius of 622.96 feet, the chord azimuth and distance being: 67° 12' 15" 265.51 feet to a point;
21. 54° 54' 105.67 feet along same to a point;
22. Thence along same on a curve to the right, having a radius of 217.04 feet, the chord azimuth and distance being: 59° 22' 33.81 feet to a point;
23. 63° 50' 103.54 feet along same to a point;
24. 48° 41' 165.93 feet along same to a point;
25. 39° 00' 138.36 feet along same to a point;
26. 54° 30' 76.25 feet along same to a point;
27. 59° 20' 165.65 feet along same to a point;
28. Thence along same on a curve to the left, having a radius of 600.00 feet, the chord azimuth and distance being: 52° 15' 147.98 feet to a point;
29. 45° 10' 129.64 feet along same to a point;
30. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 315° 10', and the point of tangency azimuth from the radial point being: 324° 33' 13", having a radius of 1,000.00 feet, the chord azimuth and distance being: 49° 51' 36.5" 163.65 feet to a point;
31. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 324° 33' 13", and the point of tangency

azimuth from the radial point  
being: 344° 00', having a  
radius of 450.00 feet, the  
chord azimuth and distance  
being: 64° 16' 36.5" 152.00  
feet to a point;

32. 74° 00' 117.78 feet along same to a point;
33. 168° 30' 98.03 feet along the remainder of  
Grant 5278 to C. Brewer and  
Company, Ltd. to a point;
34. Thence along same on a curve to the left, having a radius of  
1,020.00 feet, the chord  
azimuth and distance being:  
164° 15' 151.18 feet to a  
point;
35. 160° 00' 41.44 feet along same to a point;
36. Thence along same on a curve to the right, having a radius  
of 105.00 feet, the chord  
azimuth and distance being:  
186° 10' 92.61 feet to a  
point;
37. 212° 20' 251.78 feet along same to a point;
38. Thence along a remainder of Grant 5278 to C. Brewer and  
Company, Ltd. and Land  
Commission Award 8559-B, Apana  
20 to William C. Lunalilo on a  
curve to the left, having a  
radius of 1,020.00 feet, the  
chord azimuth and distance  
being: 197° 40' 516.52 feet  
to a point;
39. 183° 00' 165.91 feet along the remainder of  
Land Commission Award 8559-B,  
Apana 20 to William C. Lunalilo  
to a point;

40. Thence along same on a curve to the right, having a radius of 250.00 feet, the chord azimuth and distance being: 208° 00' 211.31 feet to a point;
41. 233° 00' 223.73 feet along same to a point;
42. Thence along the remainder of Land Commission Award 8559-B, Apana 20 to William C. Lunailo and Royal Patent 7584, Land Commission Award 781 to Alexander M. Birch on a curve to the left, having a radius of 300.00 feet, the chord azimuth and distance being: 213° 00' 205.21 feet to a point;
43. 193° 00' 95.80 feet along the remainder of Royal Patent 7584, Land Commission Award 781 to Alexander M. Birch to a point;
44. Thence along same on a curve to the right, having a radius of 300.00 feet, the chord azimuth and distance being: 201° 40' 90.41 feet to a point;
45. 210° 20' 784.76 feet along same to a point;
46. 220° 03' 129.56 feet along the remainder of Royal Patent 7584, Land Commission Award 781 to Alexander M. Birch and Grant 6628 to Thomas B. Lyons to the point of beginning and containing an area of 69.315 acres.

Said above described parcel of land having been acquired by the Grantor herein by the following:

1. By Deed of Waihee Sugar Company, a Hawaii corporation, dated December 31, 1894, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 152 on Page 189; and

2. By Deed of Waikapu Agricultural Company, Limited, a Hawaii corporation, dated September 1, 1921, recorded in the said Bureau of Conveyances in Liber 605 on Page 148.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Road as shown on tax map.

3. Grant to Maui Electric Company, Limited and Hawaiian Telephone Company (now known as Verizon Hawaii Inc.) dated December 11, 1986, recorded in the said Bureau of Conveyances in Liber 20343 on Page 457, granting an easement for utility purposes as shown on the map attached thereto.

4. Grant to County of Maui, a political subdivision of the State of Hawaii, dated November 25, 1987, recorded in the said Bureau of Conveyances in Liber 22185 on Page 378, granting a non-exclusive easement for fire hydrant purposes over Easement "A" (Waterline Easement) in favor of the Department of Water Supply, County of Maui, over and across a portion of TMK: 3-2-13:13 (Portion of R. P. 7690, L.C. Aw. 781:2 to Alexander M. Birch) at Waiehu, Maui, Hawaii, said easement being more particularly described therein.

5. A non-exclusive twenty-four foot (24') wide access and utility easement for the benefit of Tax Key (2) 3-2-013-015, as set forth in Quitclaim Deed dated June 28, 2002, recorded in the said Bureau of Conveyances as Document No. 2002-151829, and shown on map attached thereto as Exhibit "B".

6. An Access Easement A in favor of Tax Map Key (2) 3-2-13:15 and more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 13,218.08 feet North and 3,596.52 feet West and running by azimuths measured clockwise from true South:

1. 168° 30'	89.46 feet along the remainder of Grant 5278 to C. Brewer and Company, Ltd.;
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2. Thence along same on a curve to the left, having a radius of 1,020.00 feet, the chord azimuth and distance being: 164° 15' 151.18 feet;
3. 160° 00' 41.44 feet along same;
4. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 70° 00' and the point of tangency azimuth from the radial point being: 109° 31' 04", having a radius of 105.00 feet, the chord azimuth and distance being: 179° 45' 32" 70.99 feet;
5. 340° 00' 108.25 feet over and across a portion of Grant 5278 to C. Brewer and Company, Ltd.;
6. Thence over and across same on a curve to the right, having a radius of 1,044.00 feet, the chord azimuth and distance being: 344° 15' 154.74 feet;
7. 348° 30' 87.71 feet over and across same;
8. 74° 20' 24.06 feet over and across same to the point of beginning and containing an area of 7,891 square feet, more or less.

7. An Access Easement B in favor of Tax Map Key  
(2) 3-2-13:15 and more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 13,209.68 feet North and 3,594.81 feet West and running by azimuths measured clockwise from true South:

1. 168° 30' 8.57 feet along the remainder of Grant 5278 to C. Brewer and Company, Ltd.;

2. 254° 20' 24.06 feet over and across a portion of Grant 5278 to C. Brewer and Company, Ltd.;
3. 344° 15' 8.40 feet over and across same;
4. 74° 00' 24.70 feet along the northerly side of Malaihi Road to the point of beginning and containing an area of 206 square feet, more or less.

8. An Irrigation Easement C in favor of Wailuku Agribusiness Company, Inc. and more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 14,242.43 feet North and 1,937.66 feet West and running by azimuths measured clockwise from true South:

1. 151° 37' 4.53 feet over and across a portion of Land Commission Award 8559-B to William C. Lunalilo;
2. Thence over and across same on a curve to the right, having a radius of 44.00 feet, the chord azimuth and distance being: 197° 08' 30" 62.79 feet;
3. 242° 40' 38.74 feet over and across same;
4. 332° 40' 8.00 feet over and across same;
5. 62° 40' 38.74 feet over and across same;
6. Thence over and across same on a curve to the left, having a radius of 36.00 feet, the chord azimuth and distance being: 17° 08' 30" 51.38 feet;
7. 331° 37' 4.53 feet over and across same;



8. 61° 37' 8.00 feet over and across same to the point of beginning and containing an area of 855 square feet, more or less.

9. An Irrigation Easement D in favor of Wailuku Agribusiness Company, Inc. and more particularly described as follows:

Beginning at a point at the northeasterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 14,235.42 feet North and 2,985.84 feet West and running by azimuths measured clockwise from true South:

1. 309° 40' 13.07 feet over and across a portion of Land Commission Award 8559-B Apana 20 to William C. Lunalilo;
2. 321° 00' 449.95 feet over and across same;
3. 221° 00' 38.72 feet over and across same;
4. Thence over and across same on a curve to the right, having a radius of 232.00 feet, the chord azimuth and distance being: 232° 25' 91.85 feet;
5. 243° 50' 4.56 feet over and across same;
6. 333° 50' 8.00 feet over and across same;
7. 63° 50' 4.56 feet over and across same;
8. Thence over and across same on a curve to the left, having a radius of 224.00 feet, the chord azimuth and distance being: 52° 25' 88.68 feet;
9. 41° 00' 48.25 feet over and across same;
10. 141° 00' 458.48 feet over and across same;
11. 43° 50' 6.98 feet over and across same;

12. 129° 40' 11.97 feet over and across same;
13. 219° 40' 15.00 feet over and across same to the point of beginning and containing an area of 4,931 square feet, more or less.

10. An Irrigation Easement E in favor of Wailuku Agribusiness Company, Inc. and more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 13,953.92 feet North and 2,593.98 feet West and running by azimuths measured clockwise from true South:

1. Thence over and across a portion of Land Commission Award 8559-B, Apana 20 to William C. Lunalilo on a curve to the right, with the point of curvature azimuth from the radial point being: 152° 57' 16", and the point of tangency azimuth from the radial point being: 153° 50', having a radius of 224.00 feet, the chord azimuth and distance being: 243° 23' 38" 3.44 feet;
2. 243° 50' 4.56 feet over and across same;
3. 333° 50' 11.05 feet over and across same;
4. 63° 50' 8.00 feet along the northerly side of Malaihi Road;
5. 153° 50' 11.02 feet over and across a portion of Land Commission Award 8559-B, Apana 20 to William C. Lunalilo to the point of beginning and containing an area of 88 square feet, more or less.

11. An Irrigation Easement F in favor of Wailuku Agribusiness Company, Inc. and more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 14,242.43 feet North and 1,937.66 feet West and running by azimuths measured clockwise from true South:

1. 241° 37' 8.00 feet over and across a portion of Land Commission Award 8559-B, Apana 20 to William C. Lunalilo;
2. 331° 37' 11.04 feet over and across same;
3. 61° 37' 8.00 feet along the northerly side of Malaihi Road;
4. 151° 37' 11.04 feet over and across a portion of Land Commission Award 8559-B, Apana 20 to William C. Lunalilo to the point of beginning and containing an area of 88 square feet, more or less.

12. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

13. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

14. Any unrecorded leases and matters arising from or affecting the same.

END OF EXHIBIT "A"

Tax Key: (2) 3-2-013-013